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IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1983

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**KENNETH CRAWFORD, . . . . .** Petitioner,

*versus*

**UNITED STATES OF AMERICA, . . .** Respondent.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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### **QUESTIONS PRESENTED**

1. Where petitioner was charged in a thirty-three count indictment with willful violations of mandatory safety standards for underground coal mines in violations of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. §801, et. seq.) over a period in excess of four years, and where thirteen of the alleged violations occurred at a mine operated by the petitioner's brother and at which three miners were accidentally killed, and for which violations the United States had virtually no evidence to connect the appellant with his deceased brother's mine, was the District Court's failure to sustain petitioner's Motion under Federal Rules of Criminal Procedure, Rule 14 for a severance an abuse of discretion and a denial of petitioner's right to a fair trial under the Due Process Clause of the Fifth Amendment?

## TABLE OF CONTENTS

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	PAGE
Questions Presented .....	i, 2
The Opinion Below .....	1
Jurisdiction .....	2
Constitutional Provisions Involved .....	2
Statutes and Federal Rules Involved .....	2-3
Statement of the Case .....	4-5
Reasons for Granting the Writ .....	5-8
I. Where Petitioner was Charged with Thirty-three Counts of Willfully Violating Mandatory Mine Safety Standards at Four Mines over a Four Year Period, and Where Thirteen of the Alleged Viola- tions Arose from Operation of a Mine with which the United States had Insufficient Evidence to Con- nect the Petitioner, and Where Three Accidental Deaths which Occurred at That Mine were Ad- mitted Into Evidence, the District Court Abused its Discretion in Failing to Grant a Motion to Sever in Order to Prevent Prejudice to the Petitioner and Protect His Right to a Fair Trial under the Due Process Clause of the Fifth Amendment. ....	5-8
Conclusion .....	8
Appendix .....	9-42
Order .....	9-11
Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §801, et seq. ....	11-23
30 CFR Chapter I, Subchapter H, Subpart A .....	23-42

## TABLE OF AUTHORITIES

---

<b>Cases:</b>	<b>PAGE</b>
<i>Schaeffer v. United States</i> , 362 U. S. 511, 4 L. Ed. 921, 80 S. Ct. 1605 (1960) .....	6
<i>United States v. Halper</i> , 590 F. 2d 422 (2d Cir., 1978) .....	7
<i>United States v. Satterfield</i> , 548 F. 2d 1341 (9th Cir., 1977) .....	8
<b>Statutes and Federal Rules and Regulations:</b>	
Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. §801, et. seq.) .....	1, 2, 3, 4
Federal Rule of Criminal Procedure, Rule 8(a) ....	3, 5
Federal Rule of Criminal Procedure, Rule 14 .....	2, 3, 4
Federal Rule of Evidence, Rule 404(b) .....	3, 4, 7
30 CFR Chapter I, Subchapter H, Subpart A .....	3
<b>Miscellaneous:</b>	
8 Moore's Fed. Practice 8.02(1) .....	6

IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1983

No. \_\_\_\_\_

KENNETH CRAWFORD,       -   -   -   -   *Petitioner,*

*v.*

UNITED STATES OF AMERICA,       -   -   *Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Petitioner prays that a Writ of Certiorari issue to review the judgment herein of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on the 15th day of June, 1983.

**OPINION BELOW**

The opinion of the Court of Appeals is not yet reported. It affirmed judgments of conviction of petitioner for ten counts of willfully violating mandatory safety standards for underground coal mines in violation of the Federal Coal Mine Health and Safety Act of 1969, as amended. (30 U.S.C. §801, et seq.) The convictions were rendered in the United States District Court for the Eastern District of Kentucky.

**JURISDICTION**

The judgment of the United States Court of Appeals was entered on June 15, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## **QUESTIONS PRESENTED**

1. Where petitioner was charged in a thirty-three count indictment with willful violations of mandatory safety standards for underground coal mines in violation of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. §801, et seq.) over a period in excess of four years, and where thirteen of the alleged violations occurred at a mine operated by the petitioner's brother and at which three miners were accidentally killed, and for which violations the United States had virtually no evidence to connect the defendant with his deceased brother's mine, was the District Court's failure to sustain petitioner's Motion under Fed. R. Crim. P. 14 for a severance an abuse of discretion and a denial of petitioner's right to a fair trial under the Due Process Clause of the Fifth Amendment?

## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **Amendment V**

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

## **STATUTES AND FEDERAL RULES INVOLVED**

1. The statute under which petitioner was prosecuted is the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §801, et seq. Because these provisions are lengthy, their pertinent text are set forth in the Appendix at pages 11-23.

2. *Rule 8(a), Federal Rules of Criminal Procedure*

"Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

3. *Rule 14, Federal Rules of Criminal Procedure*

"If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires . . ."

4. *Rule 404(b), Federal Rules of Evidence*

"**Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

5. Because of its length 30 CFR Chapter I, Subchapter H, Subpart A, passed pursuant to the Federal Coal Mine Health and Safety Act, 30 U.S.C. §801 *et seq.* its text is set out in the Appendix at pages 23-42).

### STATEMENT OF THE CASE

Petitioner was charged in a thirty-three count indictment with violations of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. §801 et seq.). These counts extended over a period of more than four years, from July 29, 1976 through October 27, 1980, and involved four different mines. One of these mines the petitioner did not even own; it was the property of his brother, Frank, who together with two others died in an accident in that mine on October 27, 1980. Despite the fact that the petitioner did not own this mine, thirteen counts brought against the petitioner arose from operation of that mine.

Petitioner moved for severance pursuant to Fed. R. Crim. P. 14 on the grounds that the government had insufficient evidence to connect him with his brother's mining operations and that he had been charged with these counts in order to connect him with evidence of a mining accident, thus prejudicing his chances of acquittal on the other counts. The trial judge denied the motion, and evidence was admitted as to events involving this mine, including the three deaths. Petitioner was convicted of ten counts, none of them involving his brother's mine.

On appeal, the Sixth Circuit ruled that despite the great length of the indictment, there was little potential for jury confusion or cumulation of evidence, and that the evidence as to his brother's mine would have been admissible under Fed. R. Evid. 404(b) to show motive, intent, plan, or absence of mistake or accident. There-



fore, the Court of Appeals held, petitioner was not prejudiced, and his conviction was sustained.

### REASONS FOR GRANTING THE WRIT

- I. Where the Petitioner was Charged with Thirty-Three Counts of Willfully Violating Mandatory Mine Safety Standards (30 U.S.C. §801, et seq.) at Four Mines over a Four Year Period, and Where Thirteen of Those Alleged Violations Arose from Operation of a Mine with which the United States had Insufficient Evidence to Connect the Petitioner, and Where Three Accidental Deaths Which Occurred at That Mine Were Admitted Into Evidence, the District Court Abused its Discretion in Failing to Grant a Motion to Sever in Order to Prevent Prejudice to the Petitioner and to Protect His Right to a Fair Trial Under the Due Process Clause of the Fifth Amendment.

Fed. R. Crim. P. 8(a) allows two or more offenses to be charged in the same indictment in a separate count under certain circumstances: 1) where the offenses charged are of the same or similar character; 2) where the alleged offenses are based on the same act or transaction; or 3) where the offenses charged are based on two or more acts or transactions which are somehow connected or constitute parts of a common scheme or plan. Otherwise, offenses may not be joined. However, even if a joinder of offenses is permitted, the court has the power to order separate trials of the counts where a defendant's rights may be prejudiced if a single trial is held. Fed. R. Crim. P. 14. Petitioner's motion for such a severance was denied.

“[T]he trial judge has a continuing duty at all stages of the trial to grant a severance if prejudice does appear. And where, as here, the charge which

originally justified joinder turns out to lack the support of sufficient evidence, a trial judge should be particularly sensitive to the possibility of such prejudice." *Schaffer v. United States*, 362 U. S. 511, 516; 4 L. Ed. 921, 925; 80 S. Ct. 945, 948 (1960).

Thus, the United States Supreme Court has recognized the danger of prejudice to a defendant in trials where several counts have been joined. As Professor Moore stated:

"Trial convenience in *criminal* procedure is not a goal on which all parties can uniformly agree. In liberal joinder the convenience is usually that of the prosecution—not simply convenience in presentation of proof, but convenience in obtaining convictions as well. Few will deny that there is a positive correlation between the number of defendants and offenses accumulated within a single trial and the likelihood of conviction." 8 Moore's Federal Practice, 8.02[1].

In this case, the United States presented very little evidence connecting petitioner with the operation of his brother's mine. Yet, by indicting him with violations at this particular operation, the government was able to repeatedly drag before the jury three deaths occurring at that mine. [Tr., Vol. IV, pp. 166-168; Vol. V. p. 48; Vol. I, pp.149-152; and others] In a case involving violations of mine safety standards, almost nothing could be as damaging to a defense as evidence of deaths in a mine. Yet, this is exactly what was permitted to be introduced into this case, even

though petitioner's connections to this mine were, to say the least, highly questionable. By introducing these additional charges, and by introducing the three deaths, the defendant's chances of acquittal on the other counts were highly prejudiced in violation of his right to a fair trial under the Due Process Clause of the Fifth Amendment.

The better rule as to joinder of offenses of the same or similar character was set forth by the Court of Appeals for the Second Circuit in *United States v. Halper*, 590 F. 2d 422, 431 (2d Cir., 1978). As set forth by that court, the rule:

“ . . . requires a severance of offenses that are purportedly of the ‘same or similar character’ unless evidence of the joined offenses would be mutually admissible in separate trials or, if not, unless the evidence is sufficiently ‘simple and distinct’ to mitigate the damages otherwise created by such a joinder.” [Citations omitted.]

Here, despite the Sixth Circuit's statement to the contrary, the offenses were not “simple and distinct.” Thirty-three offenses were charged. The indictment was long, complex, and difficult to read.

Furthermore, even if evidence of the severed offenses charged would be admissible at a separate trial under Fed. R. Evid. 404(b), it would be restricted to a narrower field of showing “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” The Court of Appeals for the Ninth Circuit stated it this way:

'The evidence put forth to prove an offense for which a defendant is tried will generally be more extensive, and thus more damaging, than that which would be adduced to establish a prior crime as proof of such matters as motive or intent.'" *United States v. Satterfield*, 548 F. 2d 1341, 1346 (9th Cir. 1977)

The Second Circuit also advised prosecutors and trial courts to exercise caution in such cases. *United States v. Halper*, 590 F. 2d 422, 431 (2d Cir. 1978)

While the government argues that all the charged offenses are parts of a "common scheme or plan", the acts charged are all of the same or similar character and the above reasoning applies. The petitioner's defense was prejudiced when his motion for severance was not granted, and he was denied his right under Due Process to a fair trial.

### CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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# **APPENDIX**

No. 82-5149

**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

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UNITED STATES OF AMERICA,     -     -     *Plaintiff-Appellee,*

*v.*

KENNETH CRAWFORD,     -     -     -     *Defendant-Appellant.*

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**ORDER**—Filed June 15, 1983

Before: ENGEL and CONTIE, Circuit Judges; and PECK,  
 Senior Circuit Judges.

Kenneth Crawford appeals his conviction following a jury trial of violations of the Federal Coal Mine Health and Safety Act, 30 U.S.C. § 801 *et seq.* ("the Act").

Crawford and three of his sons were named in a 33-count indictment alleging willful violations of the Act occurring over a four-year period at four mines in Whitley, Kentucky. Thirteen of the 33 counts involved activities occurring at the Frank Crawford Coal Company, No. 1 Mine, which was operated by his brother, Frank Crawford, Jr. The government alleged that both Kenneth and Frank, Jr. operated this mine. Crawford made a motion for severance pursuant to Fed. R. Crim. P. 14, claiming that there was insufficient evidence to connect him to his brother's mining operation and that the government charged him with these violations in order to produce against him evidence of an accident which killed three miners, including Frank, Jr. The trial judge denied the motion. Crawford was acquitted of all 13 charges concerning the Crawford mine, but he was convicted of 10 of the 33 counts listed in the indictment.

Crawford on appeal does not seriously question that joinder was originally proper under Fed. R. Crim. P. 8(a),

which permits joinder of offenses which are "based . . . on two or more acts or transactions connected together or constituting parts of a common scheme or plan." He instead asserts that the trial judge abused his discretion in not allowing severance under Rule 14, which provides:

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the courts may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires.

Upon a review of the record as a whole, we find the trial judge did not abuse his discretion. In order for Crawford to establish that severance was required, he must show a potential that the jury will be confused or will view the evidence as cumulative, *United States v. Davis*, 80-5015, 80-5023 (6th Cir. May 13, 1983); *Corbett v. Bordenkircher*, 615 F. 2d 722 (6th Cir. 1980). The potential for prejudice must be balanced against the need for avoidance of duplicative trials involving similar proofs. *Corbett v. Bordenkircher*, 615 F. 2d at 725. The potential for jury confusion or cumulation of the evidence is minimal where, as here, the counts involved were simple and involved distinct violations of the Act. This conclusion is buttressed by the fact that the jury acquitted Crawford of several counts for which he was indicted. Moreover, there was evidence from which it could be concluded that Crawford had a part in running the mine,<sup>1</sup> which could have been admitted at trial

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<sup>1</sup>The record indicates that Crawford's brother, Frank, Jr., had no prior mining experience upon taking on managerial responsibilities at the mine on September 6, 1980. He was killed seven weeks later. The evidence also indicated that Frank, Jr. was dependent upon Crawford for help with the administration of the mine, including the loan of labor and machinery.

to show motive, intent, plan or absence of mistake or accident. Fed. R. Evid. 404(b). Crawford therefore was not prejudiced by inclusion of the counts, and severance would have caused needless and duplicative litigation. Accordingly,

IT IS ORDERED that the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

(s) John P. Hehman  
Clerk

**FEDERAL COAL MINE HEALTH AND SAFETY  
ACT OF 1969, AS AMENDED**

§ 801. Congressional findings and declaration of purpose  
Congress declares that—

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner;

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;



(f) the disruption of production and the loss of income to operators and miners as a result of coal or other mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) It is the purpose of this chapter (1) to establish mandatory health and safety standards and to direct the Secretary of Health and Human Services and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal or other mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal or other mining industry, research and development and training programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.

\* \* \* \* \*

## **§ 820. Penalties**

\* \* \* \* \*

### **(d) Criminal penalties**

Any operator who willfully violates a mandatory health or safety standard, or knowingly violates or fails or refuses to comply with any order issued under section 814 of this title and section 817 of this title, or any order incorporated in a final decision issued under this subchapter, except an order incorporated in a decision under subsection (a) of this section or section 815(c) of this title, shall, upon conviction, be punished by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed

after the first conviction of such operator under this chapter, punishment shall be by a fine of not more than \$50,000, or by imprisonment for not more than five years, or both.

## **§ 825. Mandatory health and safety training**

### **(a) Approved program; regulations**

Each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary. The Secretary shall promulgate regulations with respect to such health and safety training programs not more than 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977. Each training program approved by the Secretary shall provide as a minimum that—

(1) new miners having no underground mining experience shall receive no less than 40 hours of training if they are to work underground. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;

(2) new miners having no surface mining experience shall receive no less than 24 hours of training if they are to work on the surface. Such training shall include instruction in the statutory rights of miners and their representatives under this chapter, use of the self-rescue device where appropriate and use of respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned;

(3) all miners shall receive no less than eight hours of refresher training no less frequently than once each 12 months, except that miners already employed on the effective date of the Federal Mine Safety and Health Amendments Act of 1977 shall receive this refresher training no more than 90 days after the date of approval of the training plan required by this section;

(4) any miner who is reassigned to a new task in which he has had no previous work experience shall receive training in accordance with a training plan approved by the Secretary under this subsection in the safety and health aspects specific to that task prior to performing that task;

(5) any training required by paragraphs (1), (2) or (4) shall include a period of training as closely related as is practicable to the work in which the miner is to be engaged.

\* \* \* \* \*

**§ 862. Roof support—Roof control plan; contents; review; availability**

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this subchapter. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secre-

tary, taking into consideration any falls of roof or ribs or inadequacy of support of roofs or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished the Secretary or his authorized representative and shall be available to the miners and their representatives.

\* \* \* \* \*

**§ 863. Ventilation—Equipment; approval; daily examinations**

(a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

**Standards for air in work areas**

(b) All active workings shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and carry away, flammable, explosive, noxious, and harmful gases, and dust, and smoke and explosive fumes. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be three thousand

cubic feet a minute. Within three months after the operative date of this subchapter, the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and other explosive gases and to reduce the level of respirable dust to the lowest attainable level. The authorized representative of the Secretary may require in any coal mine a greater quantity and velocity of air when he finds it necessary to protect the health or safety of miners. Within one year after the operative date of this subchapter, the Secretary or his authorized representative shall prescribe the maximum respirable dust level in the intake aircourses in each coal mine in order to reduce such level to the lowest attainable level. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

\* \* \* \* \*

**Pre-shift examinations and tests; scope; violations of mandatory standards; notification; posting of "DANGER" signs; restriction of entry; records; re-entry**

(d) (1) Within three hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the Secretary or his authorized representative. Each such examiner shall examine every working section in such workings and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are

functioning properly; examine and test the roof, face, and rib conditions in such working section; examine active roadways, travelways, and belt conveyors on which men are carried, approaches to abandoned areas, and accessible falls in such section for hazards; test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume and velocity; and examine for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require. Belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "DANGER" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination, such mine examiner shall report the results of his examination to a person, designated by the operator to receive such reports at a designated station on the surface of the mine, before other persons enter the underground areas of such mine to work in such shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the operator

to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

\* \* \* \* \*

**Daily examinations and tests; scope; imminent danger; withdrawal of persons; abatement of danger**

(e) At least once during each coal-producing shift, or more often if necessary for safety, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until the danger is abated. Such examination shall include tests for methane with a means approved by the Secretary for detecting methane and for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary.

\* \* \* \* \*

**Weekly examination for hazardous conditions; scope; notification; repairs; imminent danger; withdrawal of persons; abatement; records**

(f) In addition to the pre-shift and daily examinations required by this section, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and, insofar as safety considerations permit, abandoned areas. Such

weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 814(d) of this title, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

\* \* \* \* \*

#### **Methane and dust control plans; contents**

(o) A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form within ninety days after the operative date of this subchapter. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every six months.

\* \* \* \* \*



**§ 872. Maps—Fireproof repository; contents; certification**

(a) The operator of a coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all pillared, worked out, and abandoned areas, except as provided in this section, entries and aircourses with the direction of airflow indicated by arrows, contour lines of all elevations, elevations of all main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine, and such other information as the Secretary may require. Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned which are inaccessible or cannot be entered safely and on which no information is available. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals prescribed by the Secretary on the basis of a survey made or certified by such engineer or surveyor.

\* \* \* \* \*

**§ 873. Blasting and explosives—Limitations on storage and use of black powder and mudcaps**

\* \* \* \* \*

**Storage of explosives and detonators; mudcaps in anthracite mines; restrictions; tests**

(b) Explosives and detonators shall be kept in separate containers until immediately before blasting. In under-

ground anthracite mines, (1) mudcaps or other open, unconfined shake shots may be fired, if restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no methane or fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous; and (3) tests for methane shall be made immediately before such shots are fired and if 1.0 volume per centum or more of methane is present, when tested, such shot shall not be made until the methane content is reduced below 1.0 volume per centum.

**Permissible explosives, detonators, and devices;  
firing; stem boreholes; nonpermissible ex-  
plosives; compressed air blasting**

(c) Except as provided in this subsection, in all underground areas of a coal mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming boreholes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Nothing in this section shall prohibit the use of compressed air blasting.

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**§ 877. General safety provisions—Location of oil and gas wells; establishment and maintenance of barriers; minimum requisites; exceptions**

. . . . .

**Emergency medical assistance preparations; locations for medical equipment; filing of implementation plans**

(m) Each operator shall make arrangements in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be provided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each coal mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. In fulfilling each of the requirements of this subsection, the operator shall meet at least minimum requirements prescribed by the Secretary of Health, Education, and Welfare. Within two months after the operative date of this subchapter, each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

**Self-rescue device; training of personnel**

(n) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

\* \* \* \* \*

**Identification check system; records**

(p) Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground, and will provide an accurate record of the persons in the mine kept on the surface in a place chosen to minimize the danger of

destruction by fire or other hazard. Such record shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than sixteen gauge.

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**30 CFR CHAPTER I**  
**SUBCHAPTER H—EDUCATION AND TRAINING**  
**Subpart A—Training and Retraining of**  
**Underground Miners**

**§ 48.1 Scope.**

The provisions of this Subpart A set forth the mandatory requirements for submitting and obtaining approval of programs for training and retraining miners working in underground mines. Requirements regarding compensation for training and retraining are also included. The requirements for training and retraining miners working at surface mines and surface areas of underground mines are set forth in Subpart B of this part.

**§ 48.2 Definitions**

For the purposes of this Subpart A—(a)(1) “Miner” means, for purposes of §§ 48.3 through 48.10 of this Subpart A, any person working in an underground mine and who is engaged in the extraction and production process, or who is regularly exposed to mine hazards, or who is a maintenance or service worker employed by the operator or a maintenance or service worker contracted by the operator to work at the mine for frequent or extended periods. This definition shall include the operator if the operator works underground on a continuing, even if irregular, basis. Short term, specialized contact workers, such as drillers and blasters, who are engaged in the extraction and production process and who have received training under § 48.6 (Training of newly-employed experienced miners) of this Subpart

A may, in lieu of subsequent training under that section for each new employment, receive training under § 48.11 (Hazard training) of this Subpart A. This definition does not include:

(i) Workers under Subpart C of this part 48, including shaft and slope workers, workers engaged in construction activities ancillary to shaft and slope sinking, and workers engaged in the construction of major addition to an existing mine which requires the mine to cease operations;

(ii) Supervisory personnel subject to MSHA approved State certification requirements; and,

(iii) Any person covered under paragraph (a)(2) of this section.

(2) Miner means, for purposes of § 48.11 (Hazard training) of this Subpart A, any person working in an underground mine and excluding persons covered under paragraph (a)(1) of this section and Subpart C of this part and supervisory personnel subject to MSHA approved State certification requirements. This definition includes any delivery, office, or scientific worker or occasional, short term maintenance or service worker contracted by the operator, and any student engaged in academic projects involving his or her extended presence at the mine.

(b) "Experienced miner" means a person who is employed as an underground miner, as defined in paragraph (a)(1) of this section, on the effective date of these rules; or a person who has received training acceptable to MSHA from an appropriate State agency within the preceding 12 months; or a person who has had at least 12 months experience working in an underground mine during the preceding 3 years; or a person who has received the training for a new miner within the preceding 12 months as prescribed in § 48.5 (Training of new miners) of this Subpart A.

(c) "New miner" means a miner who is not an experienced miner.

(d) "Normal working hours" means a period of time during which a miner is otherwise scheduled to work. This definition does not preclude scheduling training classes on the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice. Miners shall be paid at a rate of pay which shall correspond to the rate of pay they would have received had they been performing their normal work tasks.

(e) "Operator" means any owner, lessee, or other person who operates, controls or supervises an underground mine; or any independent contractor identified as an operator performing services or construction at such mine.

(f) "Task" means a work assignment that includes duties of a job that occur on a regular basis and which requires physical abilities and job knowledge.

(g) "Act" means the Federal Mine Safety and Health Act of 1977.

**§ 48.3 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors.**

(a) Each operator of an underground mine shall have an MSHA approved plan containing programs for training new miners, training newly-employed experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

(1) In the case of an underground mine which is operating on the effective date of this Subpart A, the operator of the mine shall submit such plan for approval within 90 days after the effective date of this Subpart A.

(2) Within 60 days after the operator submits the plan for approval, unless extended by MSHA, the operator shall have an approved plan for the mine.

(3) In the case of a new underground mine which is to be opened or a mine which is to be reopened or reactivated after the effective date of this Subpart A, the operator shall have an approved plan prior to opening the new mine, or reopening or reactivating the mine.

(b) The training plan shall be filed with the Chief of the Training Center, MSHA, for the area in which the mine is located.

(c) Each operator shall submit to the Chief of the Training Center, MSHA, the following information:

(1) The company name, mine name, and MSHA identification number of the mine.

(2) The name and position of the person designated by the operator who is responsible for health and safety training at the mine. This person may be the operator.

(3) A list of MSHA approved instructors with whom the operator proposes to make arrangements to teach the courses, and the courses each instructor is qualified to teach.

(4) The location where training will be given for each course.

(5) A description of the teaching methods and the course materials which are to be used in training.

(6) The approximate number of miners employed at the mine and the maximum number who will attend each session of training.

(7) The predicted time or periods of time when regularly scheduled refresher training will be given. This schedule shall include the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training.

(8) For the purposes of § 48.7 (New task training of miners) of this Subpart A, the operator shall submit:

(i) A complete list of task assignments to correspond with the definition of "task" in § 48.2(f) of this Subpart A.

(ii) The titles of personnel conducting the training for this section.

(iii) The outline of training procedures used in training miners in those work assignments listed according to paragraph (c)(8)(i) of this section.

(iv) The evaluation procedures used to determine the effectiveness of training under § 48.7 of this Subpart A.

(d) The operator shall furnish to the representative of the miners a copy of the training plan two weeks prior to its submission to the Chief of the Training Center. Where a miner's representative is not designated, a copy of the plan shall be posted on the mine bulletin board 2 weeks prior to its submission to the Chief of the Training Center. Written comments received by the operator from miners or their representatives shall be submitted to the Chief of the Training Center. Miners or their representatives may submit written comments directly to the chief of the training center.

(e) All training required by the training plan submitted to and approved by the Chief of the Training Center as required by this Subpart A shall be subject to evaluation by the Office of Education and Training, MSHA, to determine the effectiveness of the training programs. If it is deemed necessary, the Chief of the Training Center may require changes in, or additions to, programs. Upon request from the Office of Education and Training, MSHA, the operator shall make available for evaluation by the Office of Education and Training the instructional materials, handouts, visual aids and other teaching accessories used or to be used in the training programs. Upon request from



the Office of Education and Training, MSHA, the operator shall provide information concerning the schedules of upcoming training.

(f) The operator shall make a copy of the MSHA approved training plan available at the mine site for MSHA inspection and for examination by the miners and their representatives.

(g) Except as provided in § 48.7 (New task training of miners) and § 48.11 (Hazard training) of this Subpart A, all courses shall be conducted by MSHA approved instructors.

(h) Instructors shall be approved by the Office of Education and Training, MSHA, in one or more of the following ways:

(1) Instructors shall take an instructor's training course conducted by the Office of Education and Training, MSHA, or given by persons designated by the Office of Education and Training, MSHA, to give such instruction; and instructors shall have satisfactorily completed a program of instruction approved by the Office of Education and Training, MSHA, in the subject matter to be taught.

(2) Instructors may be designated by MSHA as approved instructors to teach specific courses based on written evidence of the instructors' qualifications and teaching experience.

(3) At the discretion of the Chief of the Training Center, instructors may be designated by MSHA as approved instructors to teach specific courses based on the performance of the instructors while teaching classes monitored by MSHA. Operators shall indicate in the training plans submitted for approval whether they want to have instructors approved based on monitored performance. The Training Center Chief shall consider such factors as the size of the mine, the number of employees, the mine safety

record and remoteness from a training facility when determining whether instructor approval based on monitored performance is appropriate.

(4) On the effective date of this Subpart A, cooperative instructors who have been designated by MSHA to teach MSHA approved courses and who have taught such courses within the 24 months prior to the effective date of this Subpart shall be considered approved instructors for such courses.

(i) Instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Before any revocation is effective, the Chief of the Training Center must send written reasons for revocation to the instructor and the instructor shall be given an opportunity to demonstrate or achieve compliance before the Chief of the Training Center on the matter. A decision by the Chief of the Training Center to revoke an instructor's approval may be appealed by the instructor to the Director of Education and Training, MSHA, 4015 Wilson Boulevard, Arlington, Va. 22203. Such an appeal shall be submitted to the Director of Education and Training within 5 days of notification of the Chief of the Training Center's decision. Upon revocation of an instructor's approval, the chief of the training center shall immediately notify operators who use the instructor for training.

(j) The Chief of the Training Center for the area in which the mine is located shall notify the operator and the miner's representative, in writing, within 60 days from the date on which the training plan is filed, of the approval or status of the approval of the training programs.

(1) If revisions are required for approval, or to retain approval thereafter, the revisions required shall be specified to the operator and the miner's representative and the

operator and the miner's representative shall be afforded an opportunity to discuss the revisions with the Chief of the Training Center, or to propose alternate revisions or changes. The Chief of the Training Center, in consultation with the operator and the representative of the miners, shall fix a time within which the discussion will be held, or alternate revisions or changes submitted, before final approval is made.

(2) The Chief of the Training Center may approve separate programs of the training plan and withhold approval of other programs, pending discussion of revisions or submission of alternate revisions or changes.

(k) Except as provided under § 48.8(c) (Annual refresher training of miners) of this Subpart A, the operator shall commence training of miners within 60 days after approval of the training plan, or approved programs of the training plan.

(1) The operator shall notify the Chief of the Training Center, MSHA, in the area in which the mine is located, and the miners' representative of any changes or modifications the operator proposes to make in the approved training plan. The operator shall obtain the approval of the Training Center Chief for such changes or modifications.

(m) In the event the Chief of the Training Center or the Director of Education and Training disapproves a training plan or a proposed modification of a training plan or requires changes in a training plan or modification, the Chief of the Training Center or the Director of Education and Training shall notify the operator and the miner's representative in writing of:

(1) The specific changes or items of deficiency.

(2) The action necessary to effect the changes or bring the disapproved training plan or modification into compliance.

(3) The deadline for completion of remedial action to effect compliance, which shall serve to suspend punitive action under the provisions of sections 104 and 110 of the Act and other related regulations until that established deadline date, except that no such suspension shall take place in imminent danger situations.

(n) The operator shall post on the mine bulletin board, and provide to the miners' representative, a copy of all MSHA revisions and decisions which concern the training plan at the mine and which are issued by the Chief of the Training Center or the Director of Education and Training.

[43 FR 47459, Oct. 13, 1978; 44 FR 1980, Jan. 9, 1979]

#### **§ 48.4 Cooperative training program.**

(a) An operator of a mine may conduct his own training programs, or may participate in training programs conducted by MSHA, or may participate in MSHA approved training programs conducted by State or other Federal agencies, or associations of mine operators, miners' representatives, other mine operators, private associations, or educational institutions.

(b) Each program and course of instruction shall be given by instructors who have been approved by MSHA to instruct in the courses which are given, and such courses and the training programs shall be adapted to the mining operations and practices existing at the mine and shall be approved by the Chief of the Training Center for the area in which the mine is located.

#### **§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.**

(a) Each new miner shall receive no less than 40 hours of training as prescribed in this section before such miner is assigned to work duties. Such training shall be con-

ducted in conditions which as closely as practicable duplicate actual underground conditions, and approximately 8 hours of training shall be given at the minesite.

(b) The training program for new miners shall include the following courses:

(1) *Instruction in the statutory rights of miners and their representatives under the Act; authority and responsibility of supervisors.* The course shall include instruction in the statutory rights of miners and their representatives under the Act, including a discussion of section 2 of the Act; a review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives; and an introduction to the operator's rules and the procedures for reporting hazards.

(2) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Such course shall be given before the new miner goes underground.

(3) *Entering and leaving the mine; transportation; communications.* The course shall include instruction on the procedures in effect for entering and leaving the mine; the check-in and checkout system in effect at the mine; the procedures for riding on and in mine conveyances; the controls in effect for the transportation of miners and materials; and the use of the mine communication systems, warning signals, and directional signs.

(4) *Introduction to the work environment.* The course shall include a visit and tour of the mine, or portions of the mine which are representative of the entire mine. A method of mining utilized at the mine shall be observed and explained.

(5) *Mine map; escapeways; emergency evacuation; barricading.* The course shall include a review of the mine map; the escapeway system; the escape, firefighting, and emergency evacuation plans in effect at the mine; and the location of abandoned areas. Also included shall be an introduction to the methods of barricading and the locations of the barricading materials, where applicable. The program of instruction for escapeways and emergency evacuation plans approved by the District Manager shall be used for this course.

(6) *Roof or ground control and ventilation plans.* The course shall include an introduction to and instruction on the roof or ground control plan in effect at the mine and procedures for roof and rib or ground control; and an introduction to and instruction on the ventilation plan in effect at the mine and the procedures for maintaining and controlling ventilation.

(7) *Health.* The course shall include instruction on the purpose of taking dust, noise, and other health measurements, and any health control plan in effect at the mine shall be explained. The health provisions of the act and warning labels shall also be explained.

(8) *Cleanup; rock dusting.* The course shall include instruction on the purpose of rock dusting and the cleanup and rock dusting program in effect at the mine, where applicable.

(9) *Hazard recognition.* The course shall include the recognition and avoidance of hazards present in the mine, particularly any hazards related to explosives where explosives are used or stored at the mine.

(10) *Electrical hazards.* The course shall include recognition and avoidance of electrical hazards.

(11) *First aid.* The course shall include instruction in first aid methods acceptable to MSHA.

(12) *Mine gases.* The course shall include instruction in the detection and avoidance of hazards associated with mine gases.

(13) *Health and safety aspects of the tasks to which the new miner will be assigned.* The course shall include instruction in the health and safety aspects of the tasks to be assigned, the safe work procedures of such tasks, and the mandatory health and safety standards pertinent to such tasks.

(14) Such other courses as may be required by the Training Center Chief based on circumstances and conditions at the mine.

(c) Methods, including oral, written, or practical demonstration, to determine successful completion of the training shall be included in the training plan. The methods for determining such completion shall be administered to the miner before he is assigned work duties.

(d) Upon proof by an operator that a newly employed miner has received the courses and hours of instruction set forth in paragraphs (a) and (b) of this section within 12 months preceding initial employment at a mine, such miner need not repeat the training, but the operator shall give and the miner shall receive and complete the instruction and program of training set forth in paragraph (b) of § 48.6 (Training of newly employed experienced miners), and § 48.7 (New task training of miners), if applicable before commencing work.

**§ 48.6 Training of newly employed experienced miners; minimum courses of instruction.**

(a) A newly employed experienced miner shall receive and complete training in the program of instruction prescribed in this section before such miner is assigned to work duties.



(b) The training program for newly employed experienced miners shall include the following:

(1) *Introduction to work environment.* The course shall include a visit and tour of the mine. The methods of mining utilized at the mine shall be observed and explained.

(2) *Mandatory health and safety standards.* The course shall include the mandatory health and safety standards pertinent to the tasks to be assigned.

(3) *Authority and responsibility of supervisors and miners' representatives.* The course shall include a review and description of the line of authority of supervisors and miners' representatives and the responsibilities of such supervisors and miners' representatives; and an introduction to the operator's rules and the procedures for reporting hazards.

(4) *Entering and leaving the mine; transportation; communications.* The course shall include instruction in the procedures in effect for entering and leaving the mine; the check-in and checkout system in effect at the mine; the procedures for riding on and in mine conveyances; the controls in effect for the transportation of miners and materials; and the use of the mine communication systems, warning signals, and directional signs.

(5) *Mine map; escapeways; emergency evacuation; barricading.* The course shall include a review of the mine map; the escapeway system; the escape, firefighting, and emergency evacuation plans in effect at the mine; the location of abandoned areas; and, where applicable, methods of barricading and the locations of barricading materials. The program of instruction for escapeways and emergency evacuation plans approved by the District Manager shall be used for this course.



(6) *Roof or ground control and ventilation plans.* The course shall include an introduction to and instruction on the roof or ground control plan in effect at the mine and procedures for roof and rib or ground control; and an introduction to and instruction on the ventilation plan in effect at the mine and the procedures for maintaining and controlling ventilation.

(7) *Hazard recognition.* The course shall include the recognition and avoidance of hazards present in the mine, particularly any hazards related to explosives where explosives are used or stored at the mine.

(8) Such other courses as may be required by the Training Center Chief based on circumstances and conditions at the mine.

**§ 48.7 Training of miners assigned to a task in which they have had no previous experience; minimum courses of instruction.**

(a) Miners assigned to new work tasks as mobile equipment operators, drilling machine operators, haulage and conveyor systems operators, roof and ground control machine operators, and those in blasting operations shall not perform new work tasks in these categories until training prescribed in this paragraph and paragraph (b) of this section has been completed. This training shall not be required for miners who have been trained and who have demonstrated safe operating procedures for such new work tasks within 12 months preceding assignment. This training shall also not be required for miners who have performed the new work tasks and who have demonstrated safe operating procedures for such new work tasks within 12 months preceding assignment. The training program shall include the following:

(1) *Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery.* The

training shall include instruction in the health and safety aspects and the safe operating procedures related to the assigned tasks, and shall be given in an on-the-job environment; and

(2) (i) *Supervised practice during nonproduction.* The training shall include supervised practice in the assigned tasks, and the performance of work duties at times or places where production is not the primary objective; on

(ii) *Supervised operation during production.* The training shall include, while under direct and immediate supervision and production is in progress, operation of the machine or equipment and the performance of work duties.

(3) *New or modified machines and equipment.* Equipment and machine operators shall be instructed in safe operating procedures applicable to new or modified machines or equipment to be installed or put into operation in the mine, which require new or different operating procedures.

(4) Such other courses as may be required by the Training Center Chief based on circumstances and conditions at the mine.

(b) Miners under paragraph (a) of this section shall not operate the equipment or machine or engage in blasting operations without direction and immediate supervision until such miners have demonstrated safe operating procedures for the equipment or machine or blasting operation to the operator or the operator's agent.

(c) Miners assigned a new task not covered in paragraph (a) of this section shall be instructed in the safety and health aspects and safe work procedures of the task, prior to performing such task.

(d) Any person who controls or directs haulage operations at a mine shall receive and complete training courses in safe haulage procedures related to the haulage system,

ventilation system, firefighting procedures, and emergency evacuation procedures in effect at the mine before assignment to such duties.

(e) All training and supervised practice and operation required by this section shall be given by a qualified trainer, or a supervisor experienced in the assigned tasks, or other person experienced in the assigned tasks.

[43 FR 47459, Oct. 13, 1978; 44 FR 1980, Jan. 9, 1979]

**§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.**

(a) Each miner shall receive a minimum of 8 hours of annual refresher training as prescribed in this section.

(b) The annual refresher training program for all miners shall include the following courses of instruction:

(1) *Mandatory health and safety standards.* The course shall include mandatory health and safety standard requirements which are related to the miner's tasks.

(2) *Transportation controls and communication systems.* The course shall include instruction on the procedures for riding on and in mine conveyances; the controls in effect for the transportation of miners and materials; and the use of the mine communication systems, warning signals, and directional signs.

(3) *Barricading.* The course shall include a review of the methods of barricading and locations of barricading materials, where applicable.

(4) *Roof or ground control and ventilation plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation.

(5) *First aid.* The course shall include a review of first aid methods acceptable to MSHA.

(6) *Electrical hazards.* The course shall include recognition and avoidance of electrical hazards.

(7) *Prevention of accidents.* The course shall include a review of accidents and causes of accidents, and instruction in accident prevention in the work environment.

(8) *Self-rescue devices and respiratory devices.* The course shall include instruction in the use, care, and maintenance of self-rescue and respiratory devices.

(9) *Explosives.* The course shall include a review and instruction on the hazards related to explosives. The only exception to this course component is when there are no explosives used or stored on the mine property.

(10) *Mine gases.* The course shall include instruction in the detection and avoidance of hazards associated with mine gases.

(11) *Health.* The course shall include instruction on the purpose of taking dust, noise, and other health measurements and any health control plan in effect at the mine shall be explained. The health provisions of the Act and warning labels shall also be explained.

(12) Such other courses as may be required by the Training Center Chief based on circumstances and conditions at the mine.

(c) All experienced miners already employed at a mine on the effective date of the Act (March 9, 1978) shall receive refresher training, as prescribed in this section and in accordance with the approved plan, to begin not more than 90 days after the date of approval of the training program required by this Subpart A.

(d) Where annual refresher training is conducted periodically, such sessions shall not be less than 30 minutes of actual instruction time and the miners shall be notified that the session is part of annual refresher training.

**§ 48.9 Records of training.**

(a) Upon a miner's completion of each MSHA approved training program, the operator shall record and certify on MSHA form 5000-23 that the miner has received the specified training. A copy of the training certificate shall be given to the miner at the completion of the training. The training certificates for each miner shall be available at the minesite for inspection by MSHA and for examination by the miners, the miner's representative, and State inspection agencies. When a miner leaves the operator's employ, the miner shall be entitled to a copy of his training certificates.

(b) False certification that training was given shall be punishable under section 110(a) and (f) of the Act.

(c) Copies of training certificates for currently employed miners shall be kept at the minesite for 2 years, or for 60 days after termination of employment.

**§ 48.10 Compensation for training.**

(a) Training shall be conducted during normal working hours; miners attending such training shall receive the rate of pay as provided in § 48.2(d) (Definition of normal working hours) of this Subpart A.

(b) If such training shall be given at a location other than the normal place of work, miners shall be compensated for the additional cost, such as mileage, meals, and lodging, they may incur in attending such training sessions.

**§ 48.11 Hazard training.**

(a) Operators shall provide to those miners, as defined in § 48.2(a)(2) (Definition of miner) of this Subpart A, a training program before such miners commence their work duties. This training program shall include the following instruction, which is applicable to the duties of such miners:

- (1) Hazard recognition and avoidance;
- (2) Emergency and evacuation procedures;
- (3) Health and safety standards, safety rules, and safe working procedures;

- (4) Self-rescue and respiratory devices; and

- (5) Such other instruction as may be required by the Chief of the Training Center based on circumstances and conditions at the mine.

(b) Miners shall receive the instruction required by this section at least once every 12 months.

(c) The training program required by this section shall be submitted with the training plan required by § 48.3(a) (Training plans: Submission and approval) of this Subpart A and shall include a statement on the methods of instruction to be used.

(d) In accordance with § 48.9 (Records of training) of this Subpart A, the operator shall maintain and make available for inspection certificates that miners have received the hazard training required by this section.

(e) Miners subject to hazard training shall be accompanied at all times while underground by an experienced miner, as defined in § 48.2(b) (Definition of miner) of this Subpart A.

#### **§ 48.12 Appeals procedures.**

The operator, miner, and miners' representative shall have the right of appeal from a decision of the Training Center Chief.

(a) In the event an operator, miner, or miners' representative decides to appeal a decision by a Training Center Chief, such an appeal shall be submitted, in writing, to the Director of Education and Training, MSHA, 4015 Wilson Boulevard, Arlington, Va. 22203, within 30 days of notification of the Chief of the Training Center's decision.

(b) The Director of Education and Training may require additional information from the operator, the miners, or their representatives, and the Chief of the Training Center, if the Director determines such information is necessary.

(c) The Director of Education and Training shall render a decision on the appeal within 30 days after receipt of the appeal.